THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 614 of 2002

Anand Singh Son of late Kishan Singh, Resident of Anand Bhawan, Paltan Bazar, Almora, District Almora.

……..Petitioner.

Vs.

1. Director Judge, Almora.
2. Prescribed Authority Civil Judge (Senior Division) Almora.
3. Sher Singh Mehta Son of Late Anand Singh Mehta, Resident of Anand Bhawan, Paltan Bazar, Almora.

……..Respondents.

Sri V.K. Bist, Senior Advocate, assisted by Ms. Jyotsna, learned counsel for the petitioner.
Learned Standing Counsel for the respondents No. 1 & 2.
Sri T.A. Khan, Adv., learned counsel for respondent no.3.

Date September 25, 2006

P.C: (Hon'ble B.S. Verma, J.)

Heard learned counsel for the parties and perused the record.

The petitioner has filed the present writ petition for setting aside the order dated 19-6-2001 passed by the Prescribed Authority, Almora (Annexure 8) and the judgment and order dated 25-2-2002 passed by the District Judge Almora, By the judgment and order dated 19-6-2001, the Prescribed Authority/Civil Jude (Senior Division) Almora has allowed the application for release of accommodation moved by the landlord under Section 21 of the U.P. Urban Buildings (regulation of Letting, Regulation and Eviction) Act, 1972 (***for short the Act)*** and the petitioner was directed to deliver possession of the suit premises to the landlord within a period of one month. The appeal preferred by the petitioner before the District Judge Almora was dismissed vide judgment and order dated 25-7-2002.

Relevant facts of the case are that the landlord Sher Singh Mehta moved an application under Section 21 of the Act for release of a room of Anand Bhawan on the ground of bona fide need, which was let out to the tenancy of the petitioner. The application was contested by the tenant on the ground that the landlord-applicant had sufficient accommodation in his possession. It was also asserted that if the accommodation in question is released, he shall suffer greater hardship than the landlord. Both the parties led evidence by way of affidavits. The learned Prescribed Authority considered the evidence and after hearing both the parties came to the conclusion that the need of the landlord is bona fide and the balance of hardship also titled in favour of the landlord. Accordingly, by the judgment and order dated 19-6-2001, the application for release was allowed. Aggrieved by the said order, the tenant-petitioner went up in appeal before the District Judge, Almora, where the case was registered as Rent Appeal No. 4 of 2001, Anand Singh Vs. Sher Singh Mehta. The appellate court also did not find favour with the tenant-petitioner dismissed the appeal vide order dated 25-7-2002.

The petitioner has assailed the impugned judgment and orders on the ground that the Prescribed Authority has not recorded a concrete finding on the point of comparative hardship and the finding of the Prescribed Authority is not based on evidence on record. According to the petitioner, the appellate court has also committed the same error.

At the outset it may be mentioned that the scope of writ jurisdiction is limited. This court while exercising writ jurisdiction cannot sit as a court of appeal. Only the perversity of the impugned order has to be examined.

A perusal of the judgment and order under challenge goes to show that the Prescribed Authority has recorded a finding of fact on the point of bona fide need on the basis of the affidavits filed by both the parties. Moreover, a commission was also issued to

advocate commissioner by the Prescribed Authority. The Prescribed Authority has also considered the point of comparative hardship. The appellate court has also recorded its finding on the point of bona fide need and comparative hardship. Thus, the finding of fact on these issues is concluded by concurrent findings of both the courts below.

In the course of arguments, the learned senior advocate Sri V.K. Bist appearing on behalf of the petitioner has urged that some reasonable time may be granted to the petitioner to vacate the disputed premises. The learned counsel for the landlord-respondent has submitted that the petitioner may be directed to furnish undertaking to that effect before the Prescribed Authority.

Having considered the entire material on record, I do not find any perversity in the impugned judgment and orders passed by the Court below. The writ petition is devoid of merit and must fail.

The writ petition is dismissed on merit. However, the petitioner is granted time for one year to vacate the suit premises and to deliver vacant and peaceful possession to the landlord Sher Singh Mehta, provided the petitioner furnishes an undertaking to that effect before the Prescribed Authority concerned by 31st day of October, 2006.

(B.S. Verma, J.)

RCP